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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 SAMANTHA LOPEZ, et al.,

12 Plaintiffs,

13 vs.

14 SHAWN AITKEN, JACOB PAVLENKO,
15 JONATHAN FECTEAU, ARACELI
16 GOCOBACHI,

16 Defendants.

17
18 AND RELATED CROSSCLAIMS

CASE NO. 07-CV-2028 JLS (WMC)

**ORDER: DENYING (1) CROSS-
CLAIMANT'S MOTION TO
RETAX COSTS; AND
(2) PLAINTIFF'S MOTION TO
RETAX COSTS**

(ECF Nos. 204, 205)

19 Presently before the Court are Defendant–Cross-claimant Araceli Gocobachi's (Cross-
20 claimant) and Plaintiff Samantha Lopez's motions to retax costs pursuant to Civil Local Rule 54.1(h).
21 (Cross-Claimant's Mot., ECF No. 204; Pl.'s Mot., ECF No. 205.) Also before the Court is Defendants
22 Shawn Aitken, Jacob Pavlenko, and Jonathan Fecteau's (collectively, Defendants) opposition to both
23 motions. (Opp'n, ECF No. 207.) For the reasons stated, the Court **DENIES** Plaintiff's and Cross-
24 claimant's motions.

25 **BACKGROUND**

26 Plaintiff filed this action on October 19, 2007. (ECF No. 1.) The operative complaint alleged
27 claims for, *inter alia*, excessive force, battery, and negligence. (FAC, ECF No. 10.) After a seven-day
28 trial, the jury rendered a verdict for Defendants, and the Court entered judgment accordingly. (Special

1 Verdict Form, ECF No. 196; Judgment, ECF No. 197.)

2 Post-trial, Defendants submitted a bill of costs in the amount of \$3,698.78. (Bill of Costs, ECF
3 No. 198.) The clerk held a telephonic hearing on Defendants' application and, pursuant to Civil Local
4 Rule 54(g), entered in Defendants' favor an Order taxing costs in the amount of \$3,018.19. (Costs
5 Order, ECF No. 203.) Plaintiff and Cross-claimant then filed the instant motions to retax pursuant to
6 Civil Local Rule 54.1(h). (Cross-claimant's Mot.; Pl.'s Mot.)

7 LEGAL STANDARD

8 Federal Rule of Civil Procedure 54(d)(1) provides: "Unless a federal statute, these rules, or a
9 court order provides otherwise, costs—other than attorney's fees—should be allowed to the prevailing
10 party." This rule "creates a presumption in favor of awarding costs to a prevailing party, but vests in
11 the district court discretion to refuse to award costs." *Ass'n of Mexican-Am. Educators v. Cal.*, 231
12 F.3d 572, 591 (9th Cir. 2000) (en banc). This discretion is not unlimited, however, and the Court must
13 give specific and appropriate reasons when costs are denied. *Id.* Some reasons that the Ninth Circuit
14 has identified include the losing party's limited financial resources and the chilling effect on future
15 civil rights litigants of imposing high costs. *Save Our Valley v. Sound Transit*, 335 F.3d 932, 945 (9th
16 Cir. 2003).

17 Although a district court must justify its decision to *deny* costs, it "need not give affirmative
18 reasons for awarding costs." *Id.* "[I]nstead, it need only find that the reasons for denying costs are
19 not sufficiently persuasive to overcome the presumption in favor of an award." *Id.* Only "in the rare
20 occasion where severe injustice will result from an award of costs (such as the injustice that would
21 result from an indigent plaintiff's being forced to pay tens of thousands of dollars of her alleged
22 oppressor's legal costs)" does a district court abuse its discretion in failing to conclude that the
23 presumption has been rebutted. *Id.*

24 ANALYSIS

25 Plaintiff and Cross-claimant argue that the Court should retax Defendants' costs on an
26 equitable basis for three reasons. First, Plaintiff and Cross-claimant contend that the Court should
27 deny Defendants' request for costs because there is no evidence that Defendants incurred the costs
28 they claim. (Cross-claimant's Mot. 2; Pl.'s Mot. 4 ("Each of the defendants was insulated from

costs . . . because the County of San Diego absorbed the costs of defending them.”.) Second, Plaintiff and Cross-claimant contend that their economic circumstances would make an award of costs inequitable. (Cross-claimant’s Mot. 2–3; Pl.’s Mot. 2–4; Cortez Decl. ¶ 4, ECF No. 205-1.) Third, Plaintiff contends that an award of costs “may very well have a chilling effect on other potentially crucial civil rights litigation.” (Pl.’s Mot. 5.)

Defendants’ bill of costs establishes that all of the costs claimed in this matter were borne by the County of San Diego Office of County Counsel, which represented Defendants in this matter. (Mot. ISO Bill of Costs Exs. B–E, ECF No. 198-2.) Contrary to Plaintiff and Cross-claimant’s apparent contention, the County of San Diego is entitled to recover the costs it incurred on Defendants’ behalf; there is no factual basis for Cross-claimant’s counsel’s speculative assertion that the claimed costs are attributable to the County’s defense, rather than that of the individual Defendants. *See, e.g., Springer v. Rancourt*, 17 F. App’x 824, 826 (10th Cir. 2001); *Wereb v. Cnty. of Maui*, 2011 WL 2020700, at *2 (D. Haw. Apr. 28, 2011) (construing motion for costs filed by joint counsel as having been made by individual defendants), *report and recommendation adopted* 2011 WL 2036973 (D. Haw. May 23, 2011). And although Plaintiff contends that there is a great financial disparity between the parties, the Court is reluctant to retax costs on that basis where the costs of defense were advanced by a public entity and the burden would fall on the taxpayers. *See Pineda v. City of Seattle*, 2007 WL 201078, at *1 (W.D. Wash. Jan. 22, 2007).

Considering Plaintiff’s and Cross-claimant’s remaining arguments, the Court finds them insufficiently persuasive to overcome the presumption in favor of an award. First, although Plaintiff and Cross-claimant argue that their limited economic means justify denial of costs, they fail to provide sufficient admissible evidence¹ supporting their assertions of indigence. *See Hsieh v. Stanford Univ.*, 2011 WL 2222167, at *2 (June 7, 2011) (finding limited financial resources based on motion submitted under penalty of perjury); *Lanagan v. Santa Cruz Metro. Transit Dist.*, 2010 WL 3245113, at *1 (N.D. Cal. Aug. 17, 2010) (finding limited financial resources based on earlier grant of *in forma*

¹ Defendants’ objections to Victor Torres’s declaration are well taken. (Opp’n 2; *see* Torres Decl. ¶ 4.) However, even if the Court were to consider Mr. Torres’s declaration, the Court would find it insufficiently detailed to justify a finding that an award would render Plaintiff indigent. *See Stanley v. Univ. of S. Cal.*, 178 F.3d 1069, 1079–80 (9th Cir. 1999).

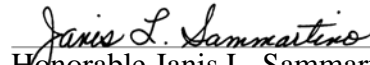
1 *pauperis* status and testimony, under penalty of perjury, regarding financial circumstances); *Rivera*
2 *v. NIBCO, Inc.*, 701 F. Supp. 2d 1135, 1143–44 (E.D. Cal. 2010) (finding lack of financial resources
3 based on declaration summarizing wage and earnings information for each plaintiff for a ten-year
4 period). Second, the Court does not believe that the imposition of costs will have a chilling effect on
5 future litigants because “the costs accumulated in this case after years of unsuccessful litigation are
6 not unreasonably high.” *Haldeman v. Golden*, 2010 WL 2176089, at *4 (D. Haw. May 28, 2010).
7 Accordingly, the Court finds “that the reasons for denying costs are not sufficiently persuasive to
8 overcome the presumption in favor of an award.” *Save Our Valley*, 335 F.3d at 945.

9 CONCLUSION

10 As stated above, the burden is on Plaintiff and Cross-claimant to rebut the presumption in favor
11 of awarding costs. Here, they have failed to do so, and the Court must abide the presumption and tax
12 costs to the losing party. Accordingly, Plaintiff’s and Cross-claimant’s motions to retax are **DENIED**.

13 **IT IS SO ORDERED.**

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15 DATED: August 19, 2011

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17 Honorable Janis L. Sammartino
18 United States District Judge
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